



Mary-Ann Warmerdam  
*Director*

## Department of Pesticide Regulation



Arnold Schwarzenegger  
Governor

### **Alameda County Pesticide Regulatory Program 2007/2008 Performance Evaluation Report**

**California Environmental Protection Agency  
Department of Pesticide Regulation  
1001 I Street  
Sacramento, California 95814**

October 10, 2008

## **Performance Evaluation of Alameda County Agricultural Commissioner's Pesticide Use Enforcement Program**

This report provides a performance evaluation of Alameda County Agricultural Commissioner's (CAC's) pesticide use enforcement (PUE) regulatory program for the fiscal year 2007-2008. The assessment evaluates the performance of goals identified in the CAC's Enforcement Work Plan (EWP) as well as the program's adherence to Department of Pesticide Regulation (DPR) standards as described in the Pesticide Use Enforcement Standards Compendium.

### **I. Summary Report of Core Program Elements**

#### **A) Restricted Materials Permitting:**

Overall, the restricted materials permitting program was found to meet DPR standards and EWP goals. However, site evaluations were found to not meet DPR standards and EWP goals.

#### **B) Compliance Monitoring:**

The compliance monitoring program element was found to meet DPR standards and EWP goals.

#### **C) Enforcement Response:**

The enforcement response program was found to meet DPR standards and EWP goals. However, the timing of enforcement response needs to improve and non-compliances are too often categorized incorrectly (A, B or C).

### **Summary Statement:**

Although deficiencies have been identified in the Alameda CAC's pesticide use enforcement program, the program is currently assessed as effective. Deficiencies in the PUE program are further described in the sections below.

### **II. Assessment of Core Program Effectiveness and Work Plan Goals**

#### **A) Restricted Materials Permitting:**

##### **1) Permit Issuance**

The Alameda CAC permit issuance procedures and performance were evaluated through observation and interviews of relevant staff and found to conform to DPR standards and expectations. The biologists that issue permits all possess Pesticide Regulation and Investigation and Environmental Monitoring licenses. The DPR evaluation determined that permits are:

- Issued only to qualified applicants;
- Signed by authorized persons;
- Issued for time periods allowed by law; and
- Permit amendments follow approved procedures.

The Alameda CAC only issues restricted materials permits for a one-year period.

Approximately 105 restricted materials permits, 40 non-agricultural permits and 151 Operator I.D.s were issued in fiscal year 2007-2008. The PUE Deputy gives annual training on the policies and procedures used to issue permits and properly identify sites.

## **2) Site Evaluation**

The Alameda CAC site evaluation procedures were evaluated through observation, record review, and interviews of relevant staff and found not to conform to DPR standards and EWP goals.

The permits:

- Contained the necessary information;
- Identified treatment areas and sensitive areas that could be adversely impacted by the permitted uses; and
- Identified mitigation measures and included conditions that addressed known hazards.

The CAC staff adequately evaluated permits and determined if the use of feasible alternatives was required. The program reviews all NOIs in a timely manner; however, the CAC did not adequately monitor agricultural and nonagricultural permits using pre-application site evaluations and use monitoring inspections. The CAC reviewed approximately 2,700 Notices of Intent (NOI) and conducted only 19 pre-application inspections (approximately 1.5% of the required 5%) associated with those NOIs. In order to comply with the 5% requirement for pre-application inspections, the CAC would have needed to conduct 135 pre-application inspections.

## **B) Compliance Monitoring:**

### **1) Inspections**

The Alameda CAC inspection procedures and performance were evaluated through DPR oversight inspections and record review and found to adequately conform to DPR standards and EWP goals.

- Biologists performing inspections possess Pesticide Regulation and Investigation and Environmental Monitoring licenses.
- Inspections are performed according to the inspection strategy documented in the CAC's EWP; However, the 2005-2006 oversight inspections conducted on smaller or independent vineyards in the Livermore area (excluding Wente and Concannon Vineyards) appeared to indicate that there was a trend to non-compliance associated with smaller growers operations. Wente/Concannon previously managed many of the smaller growers vineyards. Wente/Concannon bought fewer grapes from these growers, which forced them to again manage their own vineyards, resulting in noncompliance with pesticide use regulatory requirements. This identified trend has not been addressed by the CAC during 2006-2007, or 2007-2008, and there has been no improved inspection strategy implemented to correct this problem.
- Inspections are performed according to DPR policies and procedures and inspection reports are complete and comprehensive. The inspections

adequately provide the information necessary to successfully prosecute violations.

- There needs to be improved communications and coordination between DPR and the CAC staff to conduct oversight inspections, especially in the Livermore area where there is more agricultural activity.

Inspections performed by the CAC were found to:

- Adequately document non-compliances/violations; and
- Include appropriate follow-up inspections and procedures.

## **2) Investigations**

The Alameda CAC investigation procedures and performance were evaluated through observation, record review, and interviews of relevant staff and found to conform to DPR standards and expectations.

- The CAC investigates all complaints and complete their reports in a timely manner. The CAC refers and or notifies to DPR and other agencies as required.
- All of the staff of the Alameda CAC's office that conducts pesticide enforcement investigations are designated as Agricultural Biologists.
- All PUE Biologists attended the Pesticide Episode Investigation Training in 2007. Training on investigative sampling is provided to the staff on an annual basis.
- Investigations are thorough and complete and are submitted on approved forms and in the approved format. The investigations document violations and the CAC collects evidence according to DPR standards. The investigations adequately provide the information necessary to successfully prosecute violations.

Investigations performed by the CAC were found to:

- Adequately address label, law and regulatory requirements, if applicable; and
- Include interviews of employers and employees as appropriate.

## **C) Enforcement Response:**

Alameda County biologists had been sending draft Decision Reports (DRs) to the DPR for review to ensure that all DR requirements are met. DPR reviewed the DRs and sent them back with comments from the EBL. The biologists also review the compliance history for the firm/person inspected and meet with the Lead PUE Biologist before issuing a violation notice.

- Biologists need some assistance in determining what appropriate category (A, B or C) the non-compliances belong in. Biologists also need some practice in writing the details of the inspections and explanations associated with justification for their enforcement/compliance decisions.
- DRs are being sent out to respondents with inaccurate classification of non-compliances affecting the respondent's compliance history. The DRs are not being sent to DPR within 30-days of creation of the compliance action, as required by the Enforcement Response Regulations (ERR).

- A number of Notice of Proposed Actions (NOPAs) have been sent out to the respondents with non-compliances placed in the wrong category with lower fine levels. This continues, even though the EBL has tried to train biologists and correct the issue.

### **III. Corrective Actions Previously Identified**

- The county has not yet implemented the “Application for Restricted Material Permits” form that they created, as stated in their 2005-2006 EWP.
- There has been no increase in the opportunity for the EBL to conduct oversight inspections performed with the county, as stated in the 2006-2007 EWP.
- The ERRs have only partially been implemented, as stated in the 2006-2007 EWP. DRs have been late or are still outstanding in association with non-compliances discovered during the 2007-2008 fiscal year, no tracking system has been set up for follow-up or enforcement/compliance action, and biologists are improperly categorizing non-compliances in DRs and NOPAs.

### **IV. Recommended Corrective Actions**

DPR and the staff person responsible for the county PUE program have jointly identified the following corrective actions:

#### **Restricted Materials Permitting:**

- The county will implement the “Application for Restricted Material Permits” form that they created to improve the county’s permit process by ensuring all required information is complete, accessible and available for each permit application.
- The county will conduct pre-application inspections on 5% of the NOIs reviewed by the county, as required.

#### **Compliance Monitoring Inspections:**

- DPR has requested that they modify the current inspection strategy and has formulated a plan for additional inspections associated with smaller growers that have non-compliance issues in the Livermore area. The PUE Lead Biologist has stated that they will reevaluate the targeting strategy for inspections. DPR will assist the county by providing inspection strategy guidance.
- DPR has requested that the CAC ensure that greater opportunity is provided to the DPR EBL to conduct oversight inspections with the CAC’s agricultural biologists.

#### **Investigations:**

- The CAC, with assistance from DPR, will provide training in investigative techniques and evidence collection.

#### **Enforcement Response:**

- The PUE Lead Biologist has stated that they will work with biologists to implement the ERR and ensure that their biologists follow ERR guidelines

when making decisions on appropriate enforcement/compliance actions to be taken and conduct these decisions in a timely manner. DPR has pre-reviewed DRs and sent them back with comments from the EBL, so county biologists know what is required in the DRs. Most of the DRs and NOPAs are well written; however, biologists still need some assistance in determining what appropriate category (A, B or C) the non-compliances belong in. The biologists also need some practice in writing the details of the inspections and explanations associated with justification for their enforcement/compliance decisions.

- A tracking system will be set up for follow-up or enforcement/compliance action tracking.

#### **IV. Non-Core and Desirable Activities**

There are no non-core activities planned for the county.